

REMARKS

The foregoing amendments and the following remarks are submitted in response to the communication dated November 16, 2009.

Status of the Claims

Claims 17 and 23 are pending in the application. Claims 17 and 23 have been amended in order to more particularly point out and distinctly claim that which Applicants regard as the invention. New claims 30 and 31 are now presented. Support for the amended claims and new claims can be found generally through Applicants' specification and/or in the previously pending claims. In particular, support for the amendments to claims 17 and 23 can be found throughout the specification, including at paragraphs [0033], [0034], [0122], Figure 2 and Figure 3 (paragraph numbers from the published PCT application are noted). Support for the language of new claims 30 and 31 can be found throughout the specification including in paragraphs [0119], [0120], [0121] and in Figure 1.

With respect to all amendments and canceled claims, Applicant has not dedicated or abandoned any unclaimed subject matter and, moreover, has not acquiesced to any rejections and/or objections made by the Patent Office. Applicant reserves the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional applications.

The 35 USC § 103 Rejection

Claims 17 and 23 are rejected under 35 USC 103(a) as being unpatentable over Fischetti et al (I) (US Patent No. 6,264,945) taken with Marova et al (Folia Microbiol 38(3):245-252 (1993)), Fischetti et al (II) (US Patent 6,056,954), Sanz et al (Eur J Biochem 187:409-416 (1990)) and Loeffler et al (Science 294:2170-2172). Regarding this rejection, the Examiner particularly remarks that the claims are directed to a composition comprising undisclosed amounts of bacteriophage derived lytic enzymes Cpl-1 and Pal having a certain desired effect. The Examiner alleges that it would have been obvious to one of skill in the art to modify the

composition of Fischetti et al (I) by replacing the degradative enzymes therein with enzymes taught by Fischetti et al (II) and as suggested by the teaching of Loeffler et al and Sanz et al for the expected benefit of providing anti-microbiol compositions suitable for the control of the bacterial pathogen P. (sic) pneumoniae. Applicants respectfully disagree and traverse this rejection.

Applicants again underscore that the cited references do not, alone or in combination, teach or suggest the claimed compositions. Applicants point out that claims 16 and 23 have above been amended, without acquiescing to the Examiner and without prejudice, in order to more particularly point out the claimed compositions. In addition, new composition claims 30 and 31 are now presented. The instant claims are directed to compositions comprising particular and disclosed amounts of bacteriophage derived lytic enzymes having a certain desired effect. To establish a prima facie case of obviousness, the prior art references must teach or suggest all the claim limitations. The compositions of claims 17 and 33, as well as new claims 30 and 31, are not made obvious by Fischetti et al (I) taken with Marova et al, Fischetti et al (II), Sanz et al, and/or Loeffler et al.

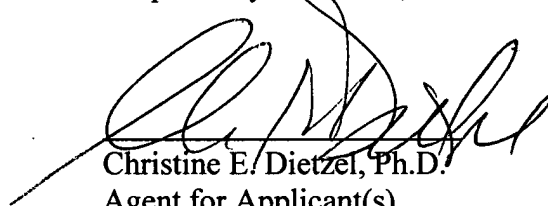
In view of the above remarks and amendments, Applicants submit that the 35 USC 103(a) rejection may properly be withdrawn.

No fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages.

CONCLUSION

Applicants respectfully request entry of the foregoing amendments and remarks in the file history of the instant Application. The Claims as amended are believed to be in condition for allowance, and reconsideration and withdrawal of all of the outstanding rejections is therefore believed in order. Early and favorable action on the claims is earnestly solicited. The Examiner is invited to contact the undersigned at the below noted telephone number in order to address any remaining issues or questions and to effect their resolution.

Respectfully submitted,



Christine E. Dietzel, Ph.D.
Agent for Applicant(s)
Registration No. 37,309

KLAUBER & JACKSON, LLC
411 Hackensack Avenue
Hackensack NJ 07601
Tel: (201) 487-5800